Sneed 64. But where the indictment alleged that the act was done "feloniously, voluntarily and maliciously," founded upon a statute that declared the act must be done "unlawfully and maliciously," the words used were not an equivalent, and the indictment was held bad: *Rex* v. *Turner*, R. & M. C. C. R. 239; 4 C. & P. 245; 1 Lewin 9. So, the word "feloniously" was held not the equivalent of "unlawfully and maliciously:" 2 Russ. Cr. 1066; *Rex* v. *Turner*, 1 Moody C. C. 239; *Rex* v. *Ryan*, 2 Id. 15. Where an indictment charged that the defendant "wilfully obstructed the public road, &c., contrary to the law," it is a sufficient averment that the act was done unlawfully; *Capps* v. *State*, 4 Iowa 502. The words "wrongfully and injuriously" are the equivalent of "unlawfully" in an indictment for maintaining a nuisance in a highway: *State* v. *Vermont Central Railroad Co.*, 1 Williams (Vt.) 103. "With intent to commit a felony" is substantially the same as "feloniously:" *Dillard* v. *State*, 3 Heisk. 260. Averring that the act was done "maliciously and without any lawful justification" is the equivalent of the averment that it was done "unlawfully:" *Commonwealth* v. *Thompson*, 108 Mass. 463.

Where a statute makes the doing of an act "wilfully and maliciously" criminal, it will not be sufficient in the indictment to charge that it was done "feloniously, unlawfully and wilfully:" *State* v. *Gove*, 34 N. H. 511; nor is "unlawfully and maliciously" the equivalent of "wilfully and maliciously:" *State* v. *Hussey*, 60 Me. 410. So, "feloniously" is not only tantamount to "unlawfully," but is a word of far more extensive and criminal meaning: *Weinzorpflin* v. *The State*, 7 Blackf. 186; *Sloan* v. *State*, 42 Ind. 570; *Greer* v. *State*, 50 Id. 267; *Beavers* v. *State*, 58 Id. 530; *Shinn* v. *State*, 68 Id. 420. "Unlawfully and feloniously" are more than the equivalent of "falsely:" *State* v. *Dark*, 8 Blackf. 526. In *State* v. *Murphy*, 21 Ind. 441, it is said, "one man cannot strike another with the malicious and premeditated intent to murder him—murder being a technical term—without so doing unlawfully."

W. W. THORNTON.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ERRORS OF CONNECTICUT.[2]

SUPREME COURT OF ILLINOIS.[3]

COURTS OF APPEAL OF LOUISIANA.[4]

SUPREME COURT OF RHODE ISLAND.[5]

SUPREME COURT OF WISCONSIN.[6]

ACKNOWLEDGMENT.

Evidence to Impeach.—In the absence of evidence of fraud, con-

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1881. The cases will probably appear in 14 or 15 Otto.

[2] From John Hooker, Esq., Reporter; to appear in 48 Connecticut Reports

[3] From Hon. N. L. Freeman, Reporter; to appear in 101 Illinois Reports.

[4] From Hon. Frank McGloin, Reporter; to appear in vol. 1 of his reports.

[5] From Arnold Green, Esq., Reporter; to appear in 13 Rhode Island Reports.

[6] From Hon. O. M. Conover, Reporter; to appear in 53 or 54 Wis. Reports.

spiracy or overreaching of any kind, or anything casting a suspicion upon the integrity or honesty of the certifying officer, and when the certificate of acknowledgment of a deed is in conformity with the statute, it cannot be impeached by merely negativing the facts therein stated: *Strauch* v. *Hathaway*, 101 Ill.

As between the former owner of land and an innocent purchaser under a deed of trust, before the title of the latter can be defeated by impeaching the truthfulness of the certificate of acknowledgment to the trust deed, the evidence must be clear and conclusive, excluding every reasonable doubt: *Id.*

Agent.

Purchase by—Liability of Undisclosed Principal.—Where goods are sold to a person who is in fact an agent of another, and on his credit, but without knowledge of the agency on the part of the seller, the latter has the right to elect to make the principal his debtor on discovering him: *Merrill* v. *Kenyon*, 48 Conn.

And the same principle applies where the seller is informed at the time of the sale that the buyer is an agent, but is not informed who the principal is: *Id.*

And where the seller takes the promissory note of the buyer for the goods, with knowledge that he is an agent, but without knowledge who is the principal, he is not debarred thereby from electing to make the principal his debtor: *Id.*

Arbitration.

Provision for in Contract—Effect of—Waiver.—Where parties definitely agree in their contract to submit all differences which may arise thereunder to arbitration, this stipulation is binding, and either party appealing to the courts, before submitting to or tendering arbitration, will be dismissed: *Alford* v. *Tiblier*, 1 McGloin.

Such a defence, however, is waived where the party sued appears and presents his defences, without specially pleading this objection: *Id.*

Bills and Notes.

Acceptance—Obligation of Acceptor.—A party accepting a commercial draft or bill of exchange guarantees the right of the drawer to execute it, and the genuineness of the signature. In innocent hands, this guarantee extends to the question of an agent's authority where the draft is drawn by procuration. It does not, however, operate to protect the person who originally receives the paper and is so chargeable with the obligation of making due inquiry: *Agnel* v. *Ellis*, 1 McGloin.

Conflict of Laws.

Adopted Child—Right of Inheritance.—The rights of inheritance acquired by an adopted child under the laws of another state, where he was adopted, will be recognised and upheld in this state only so far as they be not inconsistent with our laws of descent, so that if such child cannot take by descent by our statute, it cannot take at all, no matter what may be the law of the state where the adoption was made: *Keegan* v. *Geraghty*, 101 Ill.

As against an adopted child, the statute should be strictly construed

as being in derogation of the general law of inheritance, which is founded on natural relationship, and is a rule of succession according to nature, which has prevailed from time immemorial: *Id.*

Constitutional Law.

Intoxicating Liquors—Statutory Provision as to Proof of Sale.—Pub. Laws R. I., cap. 797, sect. 4, of March 18th 1880, provides: "It shall not be necessary to prove an actual sale of the liquors enumerated in sects. 18 and 19 of said chapter 508, in any building, shop, saloon, place or tenement, in order to establish the fact that any of said liquors are there kept for sale; but the notorious character of any such premises, or the notoriously bad or intemperate character of persons frequenting the same, or the keeping of the implements or appurtenances usually appertaining to grog-shops, tippling-shops, or places where such liquors are sold, shall be *prima facie* evidence that said liquors are kept on such premises for the purposes of sale within this state." *Held*, unconstitutional, in depriving the accused of the protection of the common-law principle that every person is to be presumed innocent until he is proved guilty, and in violating the provision that an accused shall not "be deprived of life, liberty or property, unless by the judgment of his peers or the law of the land:" *State* v. *Beswick*, 13 R. I.

Contract.

Failure of Consideration.—A. sold certain goods to B., taking in payment the standing wood on a farm held by B. Of this standing wood, the amount brought to market by A. only paid the outlay made for cutting and hauling, and the trade with B. was made pending equity proceedings, which involved the title to the farm, and which resulted adversely to B. *Held*, that there was a total failure of consideration for the goods sold by A. to B. *Held, further*, that A. could maintain assumpsit against B. for the value of these goods: *Peckham* v. *Kiernan*, 13 R. I.

Purchase of Stock on Margin—Evidence of meaning of "Margin"—Wagering Contract—Usury.—The defendant wrote the plaintiffs, who were stockbrokers in the city of New York—"I want to buy say one hundred shares Union Pacific stock on margin. You will take $1000 first mortgage N. York & Oswego R. R. and do it?" The plaintiffs replied that they would, and at once bought the stock, and soon after sold it by the defendant's order at a profit. Other stocks were afterwards bought and sold by the plaintiffs for the defendant under the same arrangement, resulting in a final loss, exceeding the value of the security held, and the plaintiffs sued for the balance. *Held*, 1. That evidence was admissible on the part of the plaintiffs to show the meaning of the words "on margin," that term being used by stockbrokers and having acquired a special and well understood meaning in their business 2. That the contract not being one for the mere payment of differences, but the defendant having, through the plaintiffs as his agents, actually purchased the stock, which was delivered to them, and which they were ready to transfer to him on payment of the purchase-money, it was not a gaming contract: *Hatch* v *Douglas*, 48 Conn.

The custom of stockbrokers to debit and credit interest monthly,

computing interest on balances, does not necessarily involve usury, as the balances may be paid. But if the taking of such interest would be usury, it is only a question of the allowance of it by the court, and does not affect the contract for the purchase and sale of the stocks, as it is wholly outside of it: *Id.*

Stipulation for Particular Measurement.—A clause in a contract of sale, that the measurement shall be by a person named, is obligatory, in default of fraud or error alleged, such as would justify rescission: *Danner* v. *Otis*, 1 McGloin.

A simple averment in the answer to a suit upon such a written contract that the measurement is not correct, according to a particular rule or method not specified in the agreement, will not warrant the introduction of evidence to contradict, annul or amplify the contract: *Id.*

Corporation.

Transfers of Stock—Failure to Record—Attachment.—B., owning certain corporate shares, transferred them on the books of the corporation as collateral security to G. The arrangements between B. and G. being ended, G., at B.'s request, endorsed and transferred the certificate of the stock to D., a creditor of B. Before any transfer had been made on the books of the corporation from G. to D. the stock was attached as the property of B. by B.'s creditors. The charter of the corporation contained no provision as to the transfer of stock, but the by-laws provided that "all transfers of stock shall be made in the books of the company." On a bill in equity brought to establish the lien of the attachment, *held*, that in the absence of a fraudulent intent on the part of B. in the transfer of the stock the attachment could not be sustained. *Held*, further, that at the time of the attachment B. had neither the legal title to the stock which was in G., nor the equitable title which was in D.: *Beckwith* v. *Burrough*, 13 R. I.

Covenant.

What amounts to.—Neither express words of covenant nor any particular words, nor any special form of words are necessary in order to charge a party with covenant. Sometimes words of proviso and condition, or even recitals, will be construed into words of covenant, such being the apparent intention and meaning of the parties: *Hale* v. *Finch*, S. C. U. S., Oct. Term 1881.

Covenant will not arise unless it can be collected from the whole instrument that there was an agreement or promise or engagement upon the part of the person sought to be charged for the performance or nonperformance of some act: *Id.*

Criminal Law.

New Trial—For Newly-Discovered Evidence.—A new trial will not be granted on the ground of newly-discovered evidence, where it does not appear but the evidence might have been had on the trial by the exercise of reasonable diligence, nor where such evidence is in its nature impeaching only: *Tobin* v. *People*, 101 Ill.

New Trial—After-Discovered Evidence.—The rules with regard to

petitions for new trials for newly-discovered evidence in civil cases, apply to such petitions in criminal cases: *Hamlin* v. *The State*, 48 Conn.

And they apply equally to capital cases; although as an error here would be remediless, the court will be more inclined to give the petitioner the benefit of any doubt that may be raised in their minds by the new evidence; *Id.*

It is one of these rules that the evidence must be sufficient to change the result if a new trial should be had: *Id.*

DAMAGES.

Negligence—Value of use of Animal Injured.—In an action for an injury to plaintiff's mare, from which she died, and which is alleged to have been caused by a defective highway, it was error to admit evidence of the value of the use of the animal during the period which intervened between the injury and the death, "including plaintiff's services in taking care of her:" *Page* v. *Town of Sumpter*, 53 or 54 Wis.

Where the verdict in such a case necessarily includes the value of the animal at the time of the injury, and also a considerable sum for the loss of her use after the injury, the damages will be regarded as excessive: *Id.*

DEBTOR AND CREDITOR. See *Husband and Wife.*

Contract for Construction of Chattel—Payment—Agreement that Title shall vest in Buyer.—Where one contracts with another for a chattel not in existence, but to be made for him, though he pays the whole price in advance or from time to time as the work progresses, he acquires no title in the chattel until it is finished and delivered to him, unless a contrary intent is expressed: *Shaw* v. *Smith*, 48 Conn.

And where the parties agree that the title shall at once vest in the buyer, so that the sale is complete as between the parties, yet the retention of possession by the maker leaves the chattel open to attachment by the creditors of the latter: *Id.*

Sale of Property not yet in Existence—Change of Possession.—By a contract between A. and B., all the colts thereafter foaled by certain mares sold by B. to A., and kept in B.'s stables under A.'s care were to belong to A. *Held*, 1. That a valid sale could be made of the colts before they were foaled. 2. That the question of retention of possession by B. could not apply to them, as they were not in existence when the mares were sold to A. and the contract made. 3. That it was not important, upon a question between A. and the creditors of B. as to the title to the colts, whether there had been a legal and visible change of possession as to the mares: *Hull* v. *Hull*, 48 Conn.

DECEDENT'S ESTATE. See *Will.*

EMINENT DOMAIN.

Highways—Streets—Use for Railroad Purposes—Extent of use Granted.—A grant of power to a railroad company to construct its road upon or across a road or highway which the route of its road may intersect, the corporation to restore the road or highway to its former state, or in a sufficient manner not to impair its usefulness, is equivalent to allowing a joint use of the highway by the company with the public,

protecting its uses as an ordinary highway against any impairment. It does not authorize a use to the exclusion of ordinary travel thereon: *P., Ft. W. & C. Railroad Co.* v. *Reich*, 101 Ill.

Equity. See Will.

Remedy to compel Issue of Corporate Bonds.—A court of chancery has no jurisdiction to entertain a bill to compel the corporate authorities of a town to issue and deliver its bonds in pursuance of a vote to aid in the construction of a railroad. The proper remedy is by mandamus. Such court has not the power to compel the performance of contracts for the payment of money or to give notes or bonds: *The Chicago, D. & V. Railroad Co.* v. *Town of St. Anne*, 101 Ill.

Action to Remove Cloud upon Title—By whom Maintainable—Parties.—Where the facts which render an assessment upon land invalid, are not matter of record, an action to prevent a cloud upon the title, by setting aside the assessment, may be maintained either by the present owner of the land in possession, or by one who has conveyed it by warranty deed with full covenants: *Pier* v. *Fond du Lac Co.*, 53 or 54 Wis.

In such an action by the grantor, the grantee, though a proper is not a necessary party, especially where parcels of the land have been granted to many persons severally: *Id.*

Evidence.

Officer's Return.—An officer's return is evidence of the facts stated in it only so far as the return is responsive to the writ: *Parker* v. *Palmer*, 13 R. I.

Hence, when to a writ of replevin an officer made return that he found the goods in the town of H. *Held*, that the return was not evidence that the goods were found in the town of H.: *Id.*

Parol Evidence to add to Written Contract.—Where a contract is reduced to writing, which purports to contain the whole contract, and it is not apparent from the writing itself that anything is left out to be supplied by extrinsic evidence, parol evidence to vary or add to its terms is not admissible: *Heil* v. *Heller*, 53 or 54 Wis.

Former Adjudication.

Judgment—Not binding on Strangers to the Action.—One not a party to an action, nor notified of its pendency, having no opportunity or right to control the defence, to introduce or cross-examine witnesses, or to prosecute a writ of error from the judgment therein, is not bound by such judgment: *Hale* v. *Finch*, S. C. U. S., Oct. Term 1881.

Frauds, Statute of.

Guaranty of Note given for Guarantor's Debt.—Where a debtor induces his creditor to take in settlement of the indebtedness the note of a third person, with such debtor's guaranty of its payment, not stating the consideration, this is in effect a promise by such debtor to pay his own debt in a particular manner, and is not within the Statute of Frauds: *Eagle M. & R. Machine Co.* v. *Shattuck*, 53 or 54 Wis.

GUARDIAN AND WARD.

Lease of Wards' Land without approval by Probate Court—Validity of.—A lease of property by a widow in her own right, and as guardian for her minor children, cannot be avoided by the lessee for want of its approval by the Probate Court. A lease executed by a guardian in behalf of his wards for a term not exceeding their majority is valid, unless disapproved by the Probate Court. The approval of that court is not essential to the validity of the lease: *Field* v. *Merrick,* 101 Ill.

HUSBAND AND WIFE.

Divorce—Opening of Decree.—A decree of divorce is subject to the order of the court during the term at which it is entered, and may on proper application and for good reasons be reopened and reheard during such term: *Mumford* v. *Mumford,* 13 R. I.

Such a decree will not be reopened at the request of a respondent whose conduct during the proceedings has shown a wish to cause delay, and who has been guilty of false pleading: *Id.*

Conveyance by Husband to Wife—Bona fides—Burden of Proof.—In an action between a wife and her husband's creditors, where she claims property in dispute by purchase from her husband, the burden is upon her to prove, by clear and satisfactory evidence, that such purchase was made in good faith, for a valuable consideration paid out of her separate estate, or by a third person for her; and the same rule applies to one who took from the wife with notice: *Horton* v. *Dewey,* 53 or 54 Wis.

In such a case, a mere recital of a valuable consideration, in the bill of sale from husband to wife, will not support a verdict in her favor: *Id.*

INSURANCE.

Mutual Company—Assessment—Pleading.—A certificate of membership in a mutual life insurance company provided that, on the death of the wife of the plaintiff, an assessment should be made upon the policy-holders in the company for as many dollars as there were policy-holders, and that the sum collected, not exceeding one thousand dollars, should be paid to him within ninety days from the filing of the proof of death. *Held,* that a declaration containing no allegation of a neglect to make the assessment provided for, and assigning no breach except of a promise to pay one thousand dollars was fatally defective, and that the defect was not cured by the verdict: *Curtis* v. *The Mutual Benefit Life Co.,* 48 Conn.

JUDGMENT. See *Former Adjudication.*

LANDLORD AND TENANT.

Prior Tenant holding Over—Rights of Subsequent Lessee.—A lessee cannot have his lease set aside and be released from his covenants to pay rent from the mere fact that a prior tenant, whose term has expired, holds over without right. The lessee, having the right of possession, should take legal steps to obtain possession against such prior tenant: *Field* v. *Herrick,* 101 Ill.

LIMITATIONS, STATUTE OF.

What Promise will take Case out of—A debtor, whose debt was barred by the Statute of Limitations, said to his creditor with regard to it, "I will pay it as soon as possible." *Held*, to be a sufficient acknowledgment of the debt to take it out of the statute: *Norton* v. *Shepard*, 48 Conn.

As a general rule any language of the debtor to the creditor clearly admitting the debt, and showing an intention to pay it, will be considered an implied promise to pay and will take the case out of the statute: *Id.*

MASTER AND SERVANT.

Contract to give Notice—Forfeiture—Temporary Absence.—An operative in the mill of the Flax Manufacturing Co. had agreed in writing to give "two weeks' notice of his desire to quit the service of said company at any time, or in default of said two weeks' notice to forfeit two weeks pay." *Held*, that the agreement did not apply to a temporary absence; that in case of a temporary absence without leave the operative might properly be discharged, but that there would be no forfeiture under the agreement of wages then earned: *Heber* v. *The Flax Man. Co.*, 13 R. I.

MINES.

Re-location—Annual Work—Entry—Acts of Congress.—Where the original locators of a mining claim who have neglected to perform the annual work required by the Act of May 10th 1872, 17 stat. 91, ch. 152, resume such work before a relocation by other parties, such resumption will continue their claim until the end of the year in which the work was resumed. The Act of June 6th 1874, 18 stat. 61, ch. 220, makes no change in this respect: *Belk* v. *Meagher*, S. C. U. S., Oct. Term 1881.

A re-location by other parties during the year in which work is resumed gives the new parties no right to the possession even though they remain in possession after the expiration of such year: *Id.*

In such case the original owners by a peaceable entry on their claim may secure a good right which will enable them to hold the claim as against such other parties: *Id.*

MORTGAGE.

Description of Debt—Parol Proof.—If in a mortgage the total amount of indebtedness secured is stated it is not necessary to specify the items of such indebtedness. If there has been no fraud, and subsequent creditors have not been injured by the omission of such specification, the identity of the debt may be established by parol. In making the proof, the debt must come fairly within the general description which has been given, but if it does, and the identity is satisfactorily made out, the mortgage will be sustained: *Wood* v. *Weimer*, S. C. U. S., Oct. Term 1881.

MUNICIPAL BONDS. See *Equity*.

NATIONAL BANK.

Usury—Purchase of Business Paper.—The fact that by the law of

the state in which a national bank is situated, the purchase of business paper from the payee, at a greater rate of discount than the legal interest, is not usurious, will not relieve the bank, in case it discounts such paper for the payee at a rate in excess of the legal interest, from the penalty imposed by sect. 5198, Rev. Stat.: *Nat. Bank of Gloversville* v. *Johnson*, S. C. U. S., Oct. Term 1881.

NEGLIGENCE. See *Railroad.*

OFFICER. See *Records.*

PARENT AND CHILD. See *Conflict of Laws.*

Meaning of word "Child"—Grandchildren.—The by-laws of a benevolent association provided that on the death of a member a sum of money should be paid "to the widow of such member, if there be one; if he leaves no widow, then to the child or children, or their lawful guardian for them, share and share alike. Should the deceased member leave no widow, child or children, the money shall be paid to such person as he may have designated in writing." *Held*, that the words "child or children" must be taken in their primary meaning, and could not be extended to include grandchildren: *Winsor* v. *Odd Fellows' Beneficial Association*, 13 R. I.

PATENT.

Public Use—What Constitutes.—To constitute a public use of an invention it is not necessary that more than one of the invented articles should be used, or that such use should be by more than one person. And if the inventor permits such use without restriction, it is a public use, notwithstanding that by the very character of the invention it is only capable of being used where it cannot be seen by the public eye: *Egbert* v. *Lippman*, S. C. U. S., Oct. Term 1881.

PAYMENT.

Made under Mistake of Fact recoverable back.—Where a person buying milk pays for the same, counting each can as containing eight gallons, supposing the cans to hold that much, when in fact they do not, he may set off the money paid by him for the shortage out of any sum he may owe the seller, in a suit for its price: *Devine* v. *Edwards*, 101 Ill.

RAILROAD.

Negligence—Persons walking on Track.—A railroad company is bound to provide for a careful lookout in the direction in which a train is moving, in places where people, and especially where children, are likely to be upon the track: *Townley* v. *C., M. & St. P. Railroad*, 53 or 54 Wis.

Although the statute (sect. 1811, R. S.) makes it unlawful for a person not connected with or employed upon a railroad, to walk along the track thereof, "except when the same shall be laid along public roads or streets," yet where the question is whether a person injured while walking upon a railroad track was guilty of a want of ordinary care, it is error to reject evidence showing that many persons, men, women and children, had, for years before the accident in question, been in the

habit of passing, daily and hourly, up and down in the same pathway on which the injured person was passing—since such evidence would tend to show a license, or to repel the inference of a want of ordinary care, and also to show a lack of such care on defendant's part as the facts required: *Id.*

Grant of Land—Location.—In all grants which are to be satisfied out of sections along the line of a road, it is necessarily implied, in the absence of specific designation otherwise, that the land is to be taken from the nearest undisposed sections of the character mentioned. Such grants give no license to the grantees to roam over the whole public domain lying on either side of the road in search of land desired. The grants must be satisfied out of the first land found which meets the conditions named: *Wood* v. *Burlington & Mo. River Railroad Co.*, S. C. U. S., Oct. Term 1881.

Receiver.

Foreign Corporation.—A foreign corporation is for purposes of jurisdiction a "resident" of the state which creates it, and under the laws of Rhode Island the courts of that state have no power to appoint a receiver of the estate of a foreign corporation doing business within the state: *Stafford* v. *American Mills Co.*, 13 R. I.

Records.

Books of Public Officer—Dedication to Public use.—The books which the recorder of mortgages for the parish of Orleans has purchased and placed in his office to be used for making the inscriptions authorized and required by law, and which have been partially filled, have been, by such use, dedicated to the public service, and they are no longer susceptible of private ownership: *Herron* v. *McEnery*, 1 McGloin.

The researches or memoranda of mortgages existing against certain persons, which have been made by the clerks of the recorders, and which are used in facilitating the preparation of certificates of mortgages, are archives of the mortgage office, and not the private property of the recorders: *Id.*

Sale. See *Debtor and Creditor.*

Conditional Sale—What is—Breach of Condition—Suit for Purchase-money.—The defendant received of the plaintiff an organ, and signed and delivered to him the following agreement prepared by the plaintiff: "The subscriber has, this 21st day of December 1877, rented of H. (the plaintiff) one choral organ, during the payment of rent as herein agreed, for the full rent of $190, payable as follows: one melodeon valued at $50, as first payment, and one note for $140, due January 15th 1879; with the understanding that if I shall have punctually paid all said rent I shall be entitled to a bill of sale of the organ, and if I fail to pay any of said rent when due, all my rights herein shall terminate, and said H. may take possession of said organ." *Held*, not to be a lease of the organ, but a conditional sale, and that the plaintiff could not recover upon the $140 note after the organ had been returned: *Hine* v. *Roberts*, 48 Conn.

The consideration of the note was not the mere right to pay for and receive title to the organ, but the actual purchase and the acquisition of title as an accomplished fact. When, therefore, the purchase failed there was a complete failure of consideration: *Id.*

SHERIFF.

Seizure of Property—Liability of Sheriff.—Sheriffs, under writs directing, in general terms, the seizure of a debtor's property, must, at their peril, primarily determine whether the property to be seized belongs to the defendant or not: *Clavarie* v. *Waggaman*, 1 McGloin.

Under writs commanding the seizure of specific property, the sheriffs, ordinarily, have no discretion and incur no responsibility, being held only to look to the jurisdiction of the court, and to the proper execution of its mandates: *Id.*

Cannot Arrest out of the County—Duties of.—The sheriff of one county cannot make an arrest in another county except on fresh pursuit in case of an escape, nor can he detain in such other county an arrested prisoner, except under a writ of *habeas corpus: Page* v. *Staples*, 13 R. I.

A sheriff is not obliged to travel about with an arrested prisoner to enable the latter to procure bail: *Id.*

STATUTE.

Repeal—Effect on Right of Action under.—Where, during the existence of a statute which made it unlawful for a railroad company to charge for the carriage of freight higher rates than those prescribed in the act, plaintiff was compelled by the defendant railway company to pay higher rates, and paid them under protest, the subsequent repeal of the statute will not prevent his recovering damages for defendant's unlawful act: *Graham* v. *C. M. & St. Paul Railroad Co.*, 53 or 54 Wis.

TAXATION.

Assessment—Constitutional Law.—The taxing power belongs to the legislative department, and it is entirely within the province of that department to determine the rules of assessment of property and for the collection of taxes: *State* v. *Board of Assessors*, 1 McGloin.

UNITED STATES COURTS.

Jurisdiction—Collusive Transfer to bring Suit in United States Court.—Where in a federal court the evidence shows that there had been a collusive transfer to a citizen of another state in order to give jurisdiction, it is the duty of the court on its own motion to stop the proceedings and dismiss the suit: *Williams* v. *Township of Nottawa*, S. C. U. S., Oct. Term 1881.

USURY. See *Contract; National Bank.*

VENDOR AND VENDEE.

Right to Alley.—Where parties purchase from a common vendor, who has laid out in the rear an alley common to them all, but by their titles their lots run back only to such alley, they receive no right,

except that of use to the land taken up thereby: *Bourke* v. *Perry*, 1 McGloin.

Vendor's Lien—Advances of Money to Vendee by a Stranger.—A. purchased one hundred and twenty acres of land, for the benefit of B., and paid the purchase-money, and had the deeds made to B. The deed was left with A., and, upon B.'s paying back to A. part of the consideration money, and giving A. his notes for the remainder, the deed was delivered to B., and he went into possession of the land. *Held*, that, in the view of equity, A. and B. stood in the relation of vendor and purchaser of the land, and the former had a vendor's lien for the amount of the unpaid notes: *Carey* v. *Boyle*, 53 or 54 Wis.

Even if A. is to be regarded as a stranger to the title, who merely advanced money to B. for the sole purpose (as understood by both) of enabling the latter to purchase the land, he is entitled, by the law of this state, to be subrogated to the rights of the vendor: *Id.*

Waters and Watercourses.

Riparian Proprietor—Ownership of Bed of Stream—Right to Ice.—A stream above the tide, although it may be navigable in fact, belongs to the riparian proprietor on each side of it to its centre thread, and the only right the public has therein is an easement for the purpose of navigation: *Washington Ice Co.* v. *Shortall*, 101 Ill.

The use of the water which belongs to the riparian proprietor, in case of its being congealed into ice, would give him the unlimited use of the ice as his exclusive property, and any stranger who enters upon the same and appropriates the ice will be liable in trespass *quare clausum fregit*: *Id.*

Will.

Undue Influence as to Single Legacy.—Fraud or undue influence in procuring one legacy in a will does not invalidate other legacies not so procured: *Harrison's Appeal*, 48 Conn.

Where the issue is as to the fact of undue influence in procuring a will, and it appears that the undue influence was confined to a single legacy in the will, the jury may find under that issue the will void as to that legacy and valid as to the others: *Id.*

Probate—Conveyance by Executor—Subsequent Discovery of Later Will—Application of Purchase-money to Mortgage of Decedent—Bill to set aside Conveyance without Repayment of Purchase-money.—A sale of land duly made by order of a probate court having jurisdiction, and a conveyance thereof by the executor of a will duly admitted to probate, while his functions are in full force, to a *bona fide* purchaser for value, vests in such purchaser a good and valid title which is not affected by the discovery of a later will and its admission to probate and record: *Davis* v. *Gaines*, S. C. U. S., Oct. Term 1881.

When the purchase-money, paid by a purchaser in good faith, of real estate of a decedent ordered to be sold by a probate court, has been applied to the extinguishment of a mortgage executed by the decedent upon the property sold, and constituting a valid encumbrance thereon, and it turns out that the sale is irregular or void, the purchaser cannot be ousted of his possession, upon a bill in equity filed by the heir or devisee, without a repayment or tender of the purchase-money so paid and applied: *Id.*